

1 not one that would have caused me to withdraw my support.

2 JUDGE CHACHKIN: Well, then, what do you mean when
3 you say "I will take a wait and see attitude"? If it wasn't
4 a concern why was there a need to take a wait and see
5 attitude? Why not go ahead with it?

6 THE WITNESS: The "wait and see," that referred to
7 the delay that was likely to occur before the final
8 authority was given to start the -- to build the station.
9 That's what I mean.

10 JUDGE CHACHKIN: There is nothing in the preceding
11 sentence that deals at all with concern about the
12 Commission's deal. You are talking here solely about the
13 concern concerning the prospect of another market station.

14 Is there any reference here to anything about the
15 Commission's delay in regard to your "wait and see"
16 attitude?

17 THE WITNESS: Well, if it wasn't, it was because I
18 inadvertently omitted it. Sorry.

19 JUDGE CHACHKIN: Go ahead, Mr. Block.

20 BY MR. BLOCK:

21 Q I want you to assume for a moment, just take this
22 assumption for a moment, that Mr. Rey -- the letter you see
23 in front of you, that as of August 10, 1990, there was a
24 clear path on construction. And I want you to assume
25 additionally that the tower litigation did not interfere

1 with that clear path under the Commission's authorization.

2 Is it possible, I'm going to reconstruct it, I am
3 going to ask you if it's possible, reconstructing the events
4 back in 1990, that you and Mr. Rey agreed to put the matter
5 on hold or take a "wait and see" attitude because you
6 weren't sure whether or not the tower litigation was going
7 to have an economic impact on the finances of the station
8 such that it would have been destructive to the possibility
9 of the station?

10 A No, that's not correct.

11 JUDGE CHACHKIN: When was the grant made to
12 Rainbow?

13 MS. POLIVY: The Supreme Court reconsideration
14 deny was August 3, 1990, Your Honor -- August 30, 1990.

15 MR. EISEN: That is stipulated.

16 MR. SILBERMAN: Your Honor, are you referring to
17 when it was -- when was the application --

18 JUDGE CHACHKIN: When was the application granted?

19 MR. BLOCK: 1985.

20 JUDGE CHACHKIN: But finally, the Supreme Court
21 had finally taken action in August 3, 1990.

22 MS. POLIVY: August 30.

23 MR. BLOCK: Excuse me. It's Joint Hearing Exhibit
24 No. 2, page 2, stipulation number 10-10.

25 And 10-9 and 11 are both pertinent here, Your

1 Honor. The Supreme Court affirmed the construction permit
2 grant to Rainbow on June 27, 1990; denied rehearing on
3 August 30, 1990. The grant of the construction permit to
4 RBC became final, that is, no longer subject to
5 administrative or juridical review, on August 30, 1990.

6 VOIR DIRE EXAMINATION

7 JUDGE CHACHKIN: So what is in there as far as the
8 Commission was concerned that precluded you from going ahead
9 with your proposal to loan the money since the Supreme Court
10 had already ruled on the matter, the application had been
11 granted?

12 The only thing that was pending as far as I could
13 see here was the fact that there was a possibility of
14 another market television station.

15 THE WITNESS: No, that is not -- I don't know the
16 answer to that.

17 JUDGE CHACHKIN: It's your statement, your
18 declaration, sir. I am trying to understand what you meant
19 in your declaration. In your declaration it's pretty clear
20 that you were concerned particularly about the prospect of
21 another market television station. "I called Joe that I
22 would take a wait and see attitude."

23 Now, what other matters --

24 MS. POLIVY: Your Honor.

25 JUDGE CHACHKIN: -- were going on at that time

1 that would cause you concern, which would cause you to take
2 a wait and see attitude? That's what I am asking you.

3 MS. POLIVY: Your Honor, that same paragraph that
4 you are referring him to refers to other factors. I think
5 you are focusing on one of the factors.

6 JUDGE CHACHKIN: Well, I am asking what other
7 matters -- what other matters were there at that time which
8 precluded you -- whereby you said you would take a "wait and
9 see" attitude rather than going ahead with the loan? What
10 other matters were there of concern to you in late 1990?

11 THE WITNESS: The concern that I had was that Joe
12 was feeling rather disappointed about the entrance of
13 another station. Once again, I didn't feel that that was as
14 negative as apparently he felt. I was ready to finance this
15 station. The "wait and see" aspect of it refers to the
16 period that it would take for the station to be fully
17 authorized to proceed to be constructed.

18 JUDGE CHACHKIN: What --

19 THE WITNESS: Now, exactly what legal requirements
20 are necessary, I do not know. I am -- I am --

21 JUDGE CHACHKIN: Well, what further authority was
22 there?

23 THE WITNESS: I don't know.

24 JUDGE CHACHKIN: The Commission had granted the
25 CP. Your agreement was that you would provide funds for

1 construction. The matter had gone to the Supreme Court.
2 The Supreme Court had now decided to let this grant stand.

3 So what other matters were there which had to be
4 done before you provided the funds?

5 THE WITNESS: If they had told me that they were
6 ready to proceed with the construction of the station, I
7 would have financed it.

8 JUDGE CHACHKIN: So your station here that you
9 were particular concerned about the consequence of another
10 market television station, and telling Joe that I would take
11 a wait and see attitude --

12 JUDGE CHACHKIN: This is incorrect the way it
13 reads?

14 THE WITNESS: No, it's incorrect. It is correct,
15 Your Honor. And it is consistent.

16 Joe was somewhat hesitant to proceed at that
17 point, and I felt that the television business, the
18 television broadcasting business was so good that I still
19 wanted to do it, and I felt that when he clears up whatever
20 matters that he had to clear up, and he could proceed to
21 build the station, I would be delighted to invest in it.
22 And I was hopeful that it would be as successful as my
23 investment in WDZL, which was a very good one.

24 JUDGE CHACHKIN: Well, I see nothing in your
25 declaration whereby you stated to Joe that you were prepared

1 to go forward and that you were not concerned, and you
2 didn't find a need for a "wait and see" attitude. You were
3 satisfied at that point to provide the funds. I see nothing
4 in your declaration in that regard. This is your
5 declaration.

6 THE WITNESS: Well, I have minutes -- I'm sorry
7 that I didn't make it as clear as I should have. But I was
8 always prepared to finance that station. I only wanted to
9 do it when they had -- when they could get final authority
10 to build it.

11 JUDGE CHACHKIN: Well, they had final authority to
12 build it.

13 THE WITNESS: Well, I didn't know that. I did
14 not, I am not a lawyer and I am not in the television
15 business, Your Honor.

16 JUDGE CHACHKIN: Well, what did Joe tell you about
17 his authority, whether they had final authority or not?

18 THE WITNESS: It was my impression that they could
19 not proceed at this stage until they resolved whatever legal
20 problems they had. That was my understanding.

21 JUDGE CHACHKIN: Of the tower, is that the legal
22 problem you're talking about?

23 THE WITNESS: Whatever legal problems that they
24 had that impaired their ability to proceed to build the
25 station was sufficient for me to be reluctant to finance the

1 station and become involved in those legal problems.

2 But once they had the final authority to go ahead
3 with the station, I was ready to finance it.

4 Now, if they then -- it may have been that it was
5 Joe's feeling that he should wait and see more than mine.

6 JUDGE CHACHKIN: Well, this is your declaration.
7 That's not what you say here.

8 THE WITNESS: It's mine and I'll stand on it.

9 JUDGE CHACHKIN: All right.

10 BY MR. BLOCK:

11 Q Turn to page 2 of your declaration, and I am
12 looking at the paragraph that begins "The oral agreement."

13 A Yes.

14 Q Let me see if I understand what this loan
15 agreement is. You are going to lend \$4 million to the
16 station, to Rainbow, and it will be paid back over a five-
17 year period in equal monthly installments at 2 percent over
18 prime.

19 And, in addition, you will get 50 percent of the
20 station's net cash flow; is that correct?

21 A Yes.

22 Q So they will be paying back the loan amortized,
23 plus 50 percent of the cash flow for the first five years.

24 A Yes.

25 MS. POLIVY: Net cash flow.

1 MR. BLOCK: Net cash flow.

2 BY MR. BLOCK:

3 Q And then after that, after the five years the
4 loans are all paid off, and you're going to get 25 percent
5 of the net cash flow forever until the station was sold.

6 A Yes.

7 Q And when the station was sold you would receive 10
8 percent of the sales price?

9 A Either 10 percent of the sale price or I would
10 retain 10 percent of the equity.

11 Q Was this agreement, in your estimation, a typical
12 agreement for lending money to television stations?

13 A I have no idea.

14 Q Was there, in your view -- in your view, did you
15 have any equity interest in the television station as a
16 result of this agreement being implemented?

17 A No.

18 Q Why not?

19 A I would not have owned any equity.

20 Why not? Because I wouldn't own any. I was a
21 lender to the station. The equity would only be generated
22 if the station were sold, or the equivalent in cash.

23 Q The \$4 million figure was set at sometime in the
24 mid eighties when you reached this oral agreement; is that
25 correct?

1 A Yes.

2 Q You made not attempt to update that for inflation
3 by 1991 or 1992?

4 MS. POLIVY: Objection, Your Honor. There is no
5 financial issue in this case.

6 JUDGE CHACHKIN: I will overrule the objection.

7 THE WITNESS: I -- we discussed it but we didn't
8 increase the amount. The amount of \$4 million was
9 apparently considered adequate.

10 BY MR. BLOCK:

11 Q What do you mean net cash flow when you used that
12 term in this declaration?

13 A Well, cash flow is profit plus depreciation less
14 whatever is spent for capital improvements. That would be
15 my impression of net cash flow.

16 Q At some point you intended to put this agreement
17 into writing when it was about to be implemented; is that
18 correct?

19 A Sure. It would be put into writing at the time
20 that I advanced the money.

21 Q You had no intention of making this loan on the
22 oral agreement once the money would leave your hands?

23 A You are right.

24 Q And you were just waiting for Joe to come to tell
25 you that he was ready for the loan at that point?

1 A Yes.

2 Q Did Mr. Rey or his counsel ask you to come to
3 Miami to testify?

4 MS. POLIVY: I'm sorry?

5 MR. EISEN: In regards to what?

6 MR. BLOCK: In regards to the -- I'm sorry.
7 Misspoken.

8 BY MR. BLOCK:

9 Q Did Mr. Rey or his counsel on the tower litigation
10 ask you to come to testify on behalf of any party in the
11 tower case?

12 MS. POLIVY: When was that? Is there a time frame
13 that you're talking about?

14 MR. BLOCK: While the case was pending.

15 MS. POLIVY: Does he know when -- you're going to
16 have to establish that he knew when the case was pending.

17 THE WITNESS: I never testified -- excuse me. I
18 think I can answer.

19 I was never asked to testify in any tower
20 litigation, in any litigation at all.

21 MR. BLOCK: I have no further questions at this
22 time.

23 JUDGE CHACHKIN: Redirect?

24 MS. POLIVY: Yes, sir.

25 JUDGE CHACHKIN: Well, wait a minute. It's not

1 redirect.

2 MS. POLIVY: It's not?

3 JUDGE CHACHKIN: You are either cross-examination
4 or you are -- now, this I am not going to permit. If you
5 want to ask direct questions you should have asked it after
6 Mr. Eisen had finished.

7 MS. POLIVY: Your Honor, we just split it. He did
8 the direct. I'll do the redirect.

9 JUDGE CHACHKIN: Well, there isn't any such thing.
10 You can't split it. As you pointed out to me, you are
11 separate parties.

12 MS. POLIVY: Well, Your Honor --

13 JUDGE CHACHKIN: You can't split it.

14 MS. POLIVY: -- it is our exhibit.

15 JUDGE CHACHKIN: Whose exhibit it is?

16 MR. EISEN: It's a joint exhibit.

17 MS. POLIVY: It's a joint exhibit, Your Honor.

18 JUDGE CHACHKIN: I don't care if it's a joint
19 exhibit. Only one party can present the direct,
20 particularly if it's a joint exhibit.

21 Now, if you want to put in a joint exhibit, then
22 only one party could act on behalf of the joint exhibit.

23 MS. POLIVY: Your Honor, it's --

24 JUDGE CHACHKIN: If it's separate exhibits which
25 you don't sponsor, then obviously you have a right to ask

1 questions.

2 MS. POLIVY: But, Your Honor --

3 JUDGE CHACHKIN: The procedure we will follow in
4 the future --

5 MS. POLIVY: -- I would state for the record that
6 it is not unusual --

7 JUDGE CHACHKIN: The procedure we will follow in
8 the future obviously will be Mr. Eisen or you will lead off,
9 and then the next person will ask direct questions too, and
10 then we will get the cross-examination. I am not going to
11 have this.

12 MR. EISEN: Understood.

13 MS. POLIVY: Your Honor, I don't intend to ask him
14 any direct questions. I am only asking redirect questions
15 from the cross.

16 MR. EISEN: This came about basically because of
17 what we discussed before the lunch break, and the decision
18 that we voluntarily made. And the fact was that direct
19 questions were very, very limited, Your Honor, and that's
20 why we decided to do it this way.

21 JUDGE CHACHKIN: I want to make sure that you are
22 the party -- if it's a joint exhibit, then one person asks
23 the questions. If it's not a joint exhibit, then whoever is
24 sponsoring the exhibit conducts direct and redirect. You
25 can't split up direct and redirect.

1 MR. EISEN: Understand.

2 JUDGE CHACHKIN: Does anyone have any objection to
3 Ms. Polivy handling redirect?

4 MR. BLOCK: No, Your Honor.

5 JUDGE CHACHKIN: Well, in the future that's the
6 way we are going to handle it.

7 MS. POLIVY: Okay, Your Honor. Sorry.

8 REDIRECT EXAMINATION

9 BY MS. POLIVY:

10 Q Mr. Conant, did Joe Rey ever come to you and tell
11 you that Rainbow had a clear path to construction?

12 If you don't understand the question, I'll
13 rephrase it.

14 MR. BLOCK: I'll object to the question as being
15 vague.

16 JUDGE CHACHKIN: Are you using specific words
17 "clear a path"? Is that the question?

18 MS. POLIVY: That was the --

19 JUDGE CHACHKIN: Is that the question?

20 MS. POLIVY: Yes.

21 JUDGE CHACHKIN: Oh, you want to know if he came
22 to you and used those specific words. That's the question.

23 MS. POLIVY: Well, --

24 THE WITNESS: I don't know if he said that.

25 BY MR. POLIVY:

1 Q Did there come a time when Joe Rey told you that
2 Rainbow was free to go forward with the construction?

3 A Yes.

4 Q And when was that?

5 A I don't remember.

6 Q Was that after 1990 or -- I'm sorry -- after 1991
7 or before 1991?

8 A I believe it was after because it was at a time
9 when he said that they wanted to get equity investors rather
10 than a loan.

11 Q Okay. You were asked by Mr. Cole why in your
12 deposition you had said that the oral agreement with Rainbow
13 was made some time between 1984-85 and 1989. And today you
14 testified that it was made in 1984 or '85.

15 Can you tell me how you came to be able to narrow
16 that down?

17 A I thought about it, and I recalled that the more
18 accurate date would be '84 or '85; that it was closer to the
19 period after we sold WDZL than I had originally thought.

20 JUDGE CHACHKIN: Did you look at any documents?

21 THE WITNESS: No.

22 BY MS. POLIVY:

23 Q But you are sure that WDZL was sold in 1984?

24 A Yes.

25 Q When WDZL, you testified, went on the air in 1982;

1 is that correct?

2 A Yes, I did.

3 Q How much prior to 1982 were you involved with the
4 WDZL authorization or application?

5 A Probably two or three years.

6 Q Were you involved with the WDZL application from
7 its inception?

8 A Yes.

9 Q Did Joe Rey ever tell you that the tower
10 litigation legally prevented him from going forward?

11 A No.

12 Q Do you know whether or not the tower litigation at
13 anytime prevented Rainbow from going forward with the
14 construction?

15 MR. BLOCK: Objection. Calls for the witness to
16 give, I think some legal opinions that he's not qualified to
17 give.

18 MS. POLIVY: I will rephrase the question.

19 BY MR. POLIVY:

20 Q Did you have an opinion at anytime as to whether
21 or not the tower litigation prevented Rainbow from going
22 forward with construction?

23 MR. BLOCK: I will make the same objection.

24 JUDGE CHACHKIN: What is the relevance of his
25 opinion?

1 MS. POLIVY: Well, Your Honor, it had to do with
2 whether or not he was -- we had a good deal of cross-
3 examination as to whether or not he knew whether Rainbow had
4 a clear path or he was told anything. I believe that that's
5 relevant to it.

6 JUDGE CHACHKIN: I will overrule the objection.
7 You may answer.

8 THE WITNESS: All right, now, will you be kind
9 enough to repeat the question, please?

10 BY MS. POLIVY:

11 Q Did you at anytime have an opinion as to whether
12 or not the tower litigation presented a legal impediment to
13 Rainbow going forward with construction?

14 A I wasn't sure.

15 Q If Joe Rey had come to you and told you that the
16 tower litigation was still going on, but that he had an
17 authorization from the FCC to construct, and they want to go
18 forward, would you have given him money?

19 A Yes.

20 JUDGE CHACHKIN: You know, these are leading
21 questions, all of them.

22 MS. POLIVY: I'm sorry.

23 JUDGE CHACHKIN: This is supposed to be redirect.
24 Leading questions are not permitted on redirect or in
25 direct, for that matter. Nobody has objected, but clearly

1 they are improper.

2 MR. EISEN: Are you referring to a specific
3 question?

4 JUDGE CHACHKIN: Well, the last question calls for
5 a yes or no answer is clearly a leading question. I want to
6 know what the witness's statement is. This is direct or
7 redirect. It's not cross-examination, obviously.

8 (Pause.)

9 BY MS. POLIVY:

10 Q One final question, Mr. Conant.

11 How would you have known when Rainbow was free to
12 go forward with construction?

13 A Joe would have told me.

14 Q Would you have had any other way of knowing?

15 A I would rely on his word.

16 MS. POLIVY: I have no further questions.

17 JUDGE CHACHKIN: Any further questions?

18 RE CROSS-EXAMINATION

19 BY MR. COLE:

20 Q Mr. Conant, is it accurate to say that Joe Rey
21 never told you he was ready to go forward?

22 A I'm sorry. I didn't -- what?

23 Q Is it accurate to say that Mr. Rey never told you
24 he was ready to go forward?

25 A No, it is not accurate.

1 Q When did he tell you that?

2 A I don't remember.

3 Well, I was told that they were ready to go
4 forward to build the station, but that they had equity
5 financing pretty well lined up.

6 MR. COLE: I have no further questions.

7 MR. BLOCK: I have a further question.

8 JUDGE CHACHKIN: Go ahead, Mr. Block.

9 RECROSS-EXAMINATION

10 BY MR. BLOCK:

11 Q You testified that that event, when he came to
12 tell you --

13 A Wait, I can't --

14 Q You testified that when he came to tell you after
15 1991 they were ready to go forward you and they had equity
16 financing; is that right, sir?

17 The date was -- it was after the 1991 date?

18 MR. EISEN: Objection. I don't think that was his
19 testimony, Your Honor. He didn't recall the date.

20 THE WITNESS: Yea, I don't recall when it was.

21 BY MR. BLOCK:

22 Q Let me ask you this.

23 In late 1990, and through January 1991, at
24 approximately the time of your -- he came to your office in
25 Chicago in late 1990.

1 In that time period did he tell you he was ready
2 to go forward with construction?

3 A I don't think so.

4 Q And in the months following that meeting, during
5 the five months following that meeting did he ever come to
6 tell you -- did he come to see you and tell you he was ready
7 to go forward with the construction?

8 A I don't believe at that time, that is correct.

9 MR. BLOCK: No further questions.

10 JUDGE CHACHKIN: You are excused. Thank you, Mr.
11 Conant.

12 MR. EISEN: Thank you very much.

13 THE WITNESS: Thank you.

14 MR. EISEN: Have a good trip home.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 JUDGE CHACHKIN: Off the record.

18 (Discussion off the record.)

19 JUDGE CHACHKIN: Back on the record.

20 In the off the record discussion Mr. Eisen
21 suggested that Mr. Rey begin his testimony at 9 a.m.
22 tomorrow morning. None of the parties objected. In light
23 of that fact we will now recess until 9 a.m. tomorrow
24 morning and take on Mr. Rey's testimony.

25 MR. EISEN: Thank you, Your Honor.

1 MR. BLOCK: Thank you, Your Honor.

2 MR. SILBERMAN: Thank you, Your Honor.

3 (Whereupon, at 2:22 p.m., the hearing was
4 recessed, to resume at 9:00 a.m., on Thursday, June 27,
5 1996.)

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